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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/058,262	01/29/2002	Christopher John Frogley	P2759	4074

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EXAMINER

GELLNER, JEFFREY L

ART UNIT

PAPER NUMBER

3643

DATE MAILED: 05/06/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application N°

10/058,262

Applicant(s)

FROGLEY, CHRISTOPHER JOHN

Examiner

Jeffrey L. Gellner

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 February 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) 9-13 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. §102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,2, and 4-8 are rejected under 35 U.S.C. §102(b) as being anticipated by Edwards (US 3,543,438).

As to Claim 1, Edwards discloses a growing medium (abstract) comprising a self-supporting block (Figs. 4 and 5; col. 4 lines 32-47) formed from sphagnum moss (col. 3 line 1) bounded together by a binding material (“filamentary means provides a binder means” of col. 4 lines 37-39) dispersed through the sphagnum moss (Figs. 4 and 5), the binding material being a compatible adhesive (inherent in Col. 4 lines 32-39).

As to Claim 2, Edwards further discloses the binding material an adhesive in aqueous dispersion (col. 3 lines 20-23; Examiner considers the adhesive to be dispersed through the sphagnum moss by “penetrate through the thickness of the entire assembly” of col. 3 lines 21-22).

As to Claim 4, Edwards further discloses the binding material a thermoplastic (“polyethylene” of col. 4 line 27).

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As to Claims 5 and 8 (when dependent upon Claim 5), Edwards further discloses fibrous material dispersed through the sphagnum moss (“wood shavings” of col. 3 lines 1-3; shredded bark defined as within the ambit of wood shavings).

As to Claims 6 and 7, Edwards further discloses a fibrous material exterior coating (“cheese cloth fabric” of col. 2 line 67).

Claim Rejections - 35 USC §103

The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 3 is rejected under 35 U.S.C. §103(a) as being unpatentable over Edwards (US 3,543,438) in view of JP1-157315.

As to Claim 3, the limitations of Claim 2 are disclosed as described above. Not disclosed is the adhesive being ethylene vinyl acetate. JP1-157315, however, discloses the use of ethylene vinyl acetate as an adhesive with sphagnum (abstract written in English). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the growing medium of Edwards by using ethylene vinyl acetate as an adhesive as disclosed by JP1-157315 depending upon price and availability of adhesives.

Claim 8 (when dependent upon Claim 7) is rejected under 35 U.S.C. §103(a) as being unpatentable over Edwards (US 3,543,438).

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As to Claim 8, the limitations of Claim 7 are disclosed as described above. Not disclosed is the outer exterior shredded waste paper. However, because cheese cloth and shredded waste paper were art-recognized equivalents at the time of the invention in those growing media where the exact material used in the exterior coating was immaterial, it would have been obvious to one of ordinary skill in the art at the time of the invention to substitute shredded waste paper for cheese cloth in the growing medium of Edwards.

Claim 14 is rejected under 35 U.S.C. §103(a) as being unpatentable over Edwards (US 3,543,438) in view of Langezaal et al. (US 5,218,783).

As to Claim 14, the limitations of Claim 1-7 are disclosed as described above. Not disclosed is the growing medium in combination with a support tray, the support tray with one or more apertures adapted to receive the growing medium and being surrounded by solid white walls, the top and base of the apertures being open. Langezaal et al., however, discloses a support tray (5 of Fig. 2) in combination with the growing medium (11 of Fig. 2); the support tray with one or more apertures (9 of Fig. 2) adapted to receive the growing medium (Fig. 2) and being surrounded by solid white walls (walls solid white in Fig. 2), the top and base of the apertures being open, the tray with solid sidewalls and the top and bottom open (see Fig. 2). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the growing medium of Edwards by using in combination with the support tray of Langezaal et al. so as to provide an easy means to carry a plurality of growing media at one time.

Response to Arguments

Applicant's arguments filed 12 February 2003 have been fully considered but they are not persuasive. Applicant's arguments are (1) neither Ellegaard, JP1-157315, nor Langezaal disclose the use of sphagnum moss but instead disclose peat moss (Response page 7, 6th complete para; and page 8, last para.); (2) Ellegaard can not be combined with JP1-157315 because Ellegaard block is designed to break down over time and JP1-157315 uses its binder to make a stable shape (Response page 8, 2nd complete para.); and, (3) the polyurethane of Langezaal melts at too high a temperature to be used with sphagnum moss (Response page 8 last para.).

As to argument (1), Applicant's original claim language was directed to "sphagnum material" and not specifically sphagnum moss. Examiner has changed the rejection to use a reference (Edwards) that recited sphagnum moss and not sphagnum peat moss to meet the amended language of Applicant's claims.

As to argument (2), Ellegaard discloses that the casings "should be reasonably durable at the outset" (col. 1 lines 25-26). Examiner considers the adhesive of JP1-157315 to ensure this attribute of Ellegaard's device.

As to argument (3), Applicant's original claim language was directed to "sphagnum material" and not specifically sphagnum moss. Examiner has changed the rejection to use a reference (Edwards) that recited sphagnum moss and not sphagnum peat moss to meet the amended language of Applicant's claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Collins, Wilson, Eaton et al., and Mosser Lee's Long Fibered Sphagnum Moss disclose in the prior art various growth media with sphagnum moss (not peat).

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Jeffrey L. Gellner whose phone number is 703.305.0053. The Examiner can normally be reached Monday through Thursday from 8:30 am to 4:00 pm. The Examiner can also be reached on alternate Fridays.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Peter Poon, can be reached at 703.308.2574. The fax phone numbers for the

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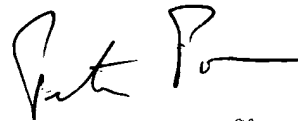
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Technology Center where this application or proceeding is assigned are 703.305.7687,
703.305.3597, and 703.306.4195.

Any inquiry of a general nature or relating to the status of this application or proceeding
should be directed to the receptionist whose telephone number is 703.308.1113.



Jeffrey L. Gellner



PETER W. POON
SUPERVISING PATENT EXAMINER
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